United States Court of Appeals for the Second Circuit



BRIEF FOR APPELLEE

To be argued by MICHAEL W. BRODY

In The

United States Court of Appeals

For The Second Circuit

BISWANATH HALDER,

Plaintiff-Appellant,

VS.

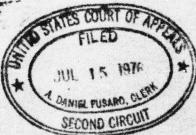
INFORMATICS, INC., and EQUIMATICS, INC.,

Defendant-Appellee.

BRIEF AND APPENDIX FOR DEFENDANT-APPELLEE

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TABLE OF STATUTES AND RULES

Rule involved:

FRCP 41(b)

FRCP 33(c)

Statutes cited:

42 U.S.C.A. 2000e-1 42 U.S.C.A. 1981-1

FRCP 33(c)

FRCP 41(b)

Rule 6 - Individual Assignment and Calendar Rules for the Eastern District

42 U.S.C.A. 2000e-5

No. 75C 925

In The

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BISWANATH HALDER,

Plaintiff-Appellant,

against

INFORMATICS, INC. and EQUIMATICS, INC.

Defendant-Appellee.

APPELLEES' BRIEF

STATEMENT

This is an appeal from the dismissal of plaintiff's complaint due to his failure to prosecute the action. Plaintiff failed to proceed when the case was called for trial.

ISSUES

- 1. Was discovery properly limited by the trial court?
- 2. Should the complaint have been dismissed by the trial court?

STATEMENT OF CASE

This is an action under Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. 2000e and the Civil Rights Act of 1866, 42 U.S.C.A. 1981 et seq. The complaint alleges that the defendant refused to employ plaintiff because he was an Asiatic Indian and an alien. The complaint also alleges discrimination on account of national origin and religion.

The summons was dated June 11, 1975 and the answer was served on July 29, 1975. Answers to interrogatories were thereafter served and discovery was completed by both parties on September 10, 1975 when defendants deposed plaintiff.

On October 10, 1975 plaintiff's motion to compel defendants to answer interrogatories was heard and denied. From that date to date of trial, February 10, 1976, no further discovery was conducted by plaintiff although he had the right and opportunity to proceed to inspect defendants' records pursuant to FRCP 33(c). When this case was called for trial, plaintiff refused to proceed stating that he had not completed discovery. The court then dismissed the complaint on defendants' motion pursuant to FRCP 41(b).

POINT I

THE TRIAL COURT PROPERLY LIMITED THE SCOPE OF INTERROGATORIES

Plaintiff's Interrogatories 4, 5, and 8 were the subject of the October 10, 1975 motion to compel and the trial court

that day, from the bench, properly denied the motion. Interrogatory No. 4 requested and was objected to as follows: Interrogatory No. 4: With respect to each and every advertisement Informatics and Equimatics have inserted in publications to recruit computer programmers and analysts from June 1, 1969 to present, state: Name and address of the publication; Date of such advertisement; B. Name and address of the operating division or subsidiary originating the advertisement; Number of vacancies advertised; E. Number of applications received; F. Number of persons interviewed; Number of persons hired. G. Answer to Interrogatory No. 4: Objected to in that as to Equimatics, prior to its take over by Informatics, it used outside consultants exclusively who may or may not have the requisite information. Objected to in that obtaining the information requested would be a burdensome and oppressive task for defendant Informatcis to do, and the information requested is not likely to lead to relevant material or admissible evidence. Informatics consists of five departments, each of which did and do their own recruiting and each of which has records on recruitment kept by its department head on an ad hoc A number of these department heads are no longer employed by defendant Informatics. - 3 -

Additionally, there was recruitment by consultants who may or may not have published advertisements. As to whatever records may exist by Informatics they would be kept in various locations in the New York Metropolitan Area and West Coast. Compilation would be burdensome and oppressive.

Upon the motion, defendants submitted an affidavit by one of their attorneys, Robert J. Miller, Esq., who stated that an attempt was made to answer Interrogatory No. 4, but that many records from this time period had been routinely destroyed and that the information requested was not available. A copy of Mr. Miller's affidavit is annexed to this brief. The affidavit also stated that much of the recruitment was done by an outside "professional recruiter" who could not supply the information requested.

The affidavit further stated that preliminary investigations into the feasibility of answering this interrogatory showed that most of the information demanded no longer existed and that further inquiry would probably be fruitless. In any event, the record on this motion showed that plaintiff himself already had copies of all advertisements placed by defendants which he answered. Indeed, his information was probably far superior to the information possessed by defendants at the time the interrogatories were served. Since the record showed that no further information other than as set forth therein could be provided, the ruling was correct as to this interrogatory.

As the defendants could not answer question 4 further, the court properly denied the motion. In Riordan v. Ferguson, 2 F.R.D. 349 (D.C.N.Y. 1942) the court stated that it was proper for the party responding to interrogatories to state that he could not answer them. As to information sought which a responding party is unable to furnish, the court in Pilling v. General Motors Corp., 45 F.R.D. 366 (D. Utah, 1968) stated that the appropriate procedure is to state that the respondent is unable to answer the interrogatory. The same court stated that interrogatories should not be excessively complex or unreasonably burdensome and that courts should prevent discovery from becoming unjustifiably burdensome or unreasonably complex. The court in Harlem River Consumers Cooperative, Inc. v. Associated Grocers of Harlem, Inc., 64 F.R.D. 459 (S.D.N.Y. 1974) also stated that it was proper for a party to state that it could not answer the interrogatories.

Interrogatory No. 5 requested and was objected to as follows:

Interrogatory No. 5:

With respect to each and every computer programmer and analyst hired by Informatics and Equimatics at any time during the period from June 1, 1969 to present, state as to each such person:

- A. Source of recruitment;
- B. Name and address of operating division or subsidiary where such person was hired;

Name, address, telephone number, social security number, and if alien, alien registration number of such person; Date hired; His/her academic training at the time of hiring; F. His/her professional experience at the time of hiring; His/her job duties and responsibilities; His/her initial compensation; His/her color, religior and national origin; Criteria and standards employed to J. select the person. If employment was terminated, date and reason for termination. Answer to Interrogatory No. 5. Objected to in that the compilation of this information is a burdensome and oppressive task for defendant Informatics to do, is not likely to lead to relevant, material or admissible evidence and additionally constitutes an invasion of privacy of defendant Informatics' employees. Notwithstanding the foregoing objections, if plaintiff wishes to inspect the terminated employee and employee files located in River Edge, New Jersey, these records will be made available to him provided that all identifying data contained in these records be deleted from any information shown to plaintiff. As to Interrogatory No. 5, defendants stated that the burden of examining these files would be the same for - 6 -

plaintiff as well as defendants and offered to make these records available pursuant to FRCP 3(c).

The court denied the motion from the bench and entered an order on the docket sheet stating that the motion was denied upon the representation by the defendants of good faith. The defendants were directed to make available to plaintiff their records under FRCP 33(c). The records were made available to the plaintiff from that point on but did not see fit to inspect them.

Interrogatory No. 8 requested and was objected to as
follows:

Interrogatory No. 8:

State whether at any time since June 1, 1969 to present, any person of a minority race, ethnic group, religious group, or national origin, has been denied employment as a computer programmer or analyst by Informatics and/or Equimatics for any reason whatsoever. If so, state the following regarding each and every such person:

- A. Name, address, telephone number, social security number, and if alien, alien registration number;
- B. Date of denial;
- C. Reason for denial.

Answer to Interrogatory No. 8:

Defendant Informatics is unable to answer as the applications for employment do now show the data enumerated in the Interrogatories.

Defendants stated in their affidavit that the information requested in Interrogatory No. 8 is not available as the

applications for employment do not carry this information. As the defendants could not answer Interrogatory No. 8, the motion was properly denied as to it.

The rulings made by a trial court regarding discovery are discretionary and where there is no substantial prejudice to a party's rights, there is no abuse of discretion which can be reversed on appeal. In Huff v. N.D. Cass Co., 468 F.2d 172 (5th Cir. 1972) a Civil Rights Action brought under Title VII of the 1964 Civil Rights Act, the court held that since the plaintiff had not shown that he was prejudiced by the trial court's rulings it would not disturb the decision, below. In another Title VII Action, Burns v. Thiokol Chemical Corp., 483 F. 2d 300 (5th Cir. 1973) the court again acknowledged that discovery matters go to the trial court's discretion and "appellate rulings delineating the bounds of discovery of the Rules are rare. (Page 304-305) The court did state that where a trial judge does not adhere to the liberal spirit of the rules, especially in Title VII cases, his decision can be reversed. The court stated that an appropriate means of answering the interrogatories in that case would be pursuant to FRCP 33(c) which had just been promulgated. This is exactly what the arrangment was in our case. Plaintiff was given the opportunity to inspect defendants' records. He failed to do so.

Of particular interest is the decision by the United States Supreme Court on June 30, 1976 in National Hockey

League, et al v. Metropolitan Hockey Club, Inc. No. 75-1558, in which the court upheld the dismissal of an anti-trust suit because of the plaintiff's failure to respond to written interrogatories from the defendants in the time allotted by the court. Here, too, the dismissal is based on plaintiff's failure to properly conduct discovery and the court's use of discretion in holding the plaintiff to a most reasonable standard.

As plaintiff has not shown that the court below abused its discretion in limiting the scope of discovery, or that he was thereby prejudiced, the ruling below was correct.

POINT II

THE TRIAL COURT PROPERLY DISMISSED THE COMPLAINT.

This matter was prosecuted fairly vigorously until
October 10, 1975. No action was taken thereafter until the
matter came on for trial on February 10, 1976, pursuant to
Rule No. 6 of the Individual Assignment and Calendar Rules
for the Eastern District. In pertinent part, Rule 6(a) states,
"Each judge shall dispose of cases assigned to him as required
by law and effective administration of justice."

During the four months that elapsed between the discovery order and the trial date, plaintiff had more than ample time to complete his discovery. He failed to do so. He made absolutely no effort whatsoever to inspect the records offered to him by defendants. At the trial, he stated that he could not proceed as he did not complete his discovery. The plaintiff cannot complaint that he was unprepared for trial while at the same time refusing to avail himself of the discovery opportunities given him. Since the plaintiff refused to proceed, defendants moved to have the complaint dismissed and the motion was granted pursuant to FRCP 41(b).

The basic point to be stressed here is that the trial court fully realized that this case was completely lacking in merit.

A copy of the plaintiff's deposition is annexed to this brief and it constitutes a complete recital of the admissions by the plaintiff that he lacked the qualifications specifically requested in all the advertisements published by the defendants to which he responded. It should be noted that although the defendants no longer had copies of the advertisements at issue, the plaintiff had copies and was examined as to each one.

Plaintiff testified at the deposition regarding each and every advertisement and in each case admitted that he lacked at least one and usually most or all of the requirements of the job. A few examples will illustrate this fact:

Page 57:

"Q Mr. Halder, this advertisement specifically states and I quote "specifically we're looking for

experience in these fields. Under systems programming, at least two years experience in 360, 370, BAL, and intervals of one of the following.

VM, VS, OS, CICS, HASP, ASP.'

According to your prior testimony and the

According to your prior testimony and the resume you have as Defendant's Exhibit B, you have no experience in any of those areas, is that true?

A I have some experience only in DOS, not in any other operating system that you mentioned.

Q Are you familiar with, for instance, VS?

A No, I'm not. The only thing I'm familiar with is DOS...

Page 58:

MR. WILLIAMS: Mr. Halder has given me an Ad from the New York Times of May 12, 1974 which should be marked as Defendant's Exhibit S...

Q Your qualifications have not changed at that point, is that correct?

- A That is correct.
- Q Had you had any experience in VM/CMS?
- A Not at all.
- Q In any of the control systems or operating systems as IMS?

A No.

Q Any time-sharing experience?

A Time-sharing, no.

Q Any experience in life, health or property casualty insurance applications?

A No, I did not.

Q Data base and file managment systems?

A No, I did not.

Q You have already testified as to Mark IV you had no experience?...

Q Is it not true, Mr. Halder, this Ad asks specifically for 360/370 programmers?

A Maybe.

Q I believe the advertisement speaks for itself, at the top it states --

A That is correct.

Q In addition it states 'we maintain the most up-to-date software and data-base management systems available utilizing 371/58 employing VM/CMS, OS, HASP, IMS and Mark IV on a national network basis.' Your prior testimony and the resume indicates that you were inexperienced in all of these areas, is that true?

A That is correct...

Q Are you familiar with SAM?
A No.
Q Are you familiar with ISAM?
A No, I'm not.
Q Are you familiar with QSAM?

A No, I'm not.

Q Do you know even what they mean?

A They are some access methods, but I never bothered to know.

Q You already testified you are unfamiliar with BTAM and QTAM?

A That is correct.

Q What about BDAM?

A Everything, all the access methods, as I said to you I worked only on one IBM 360 project and what access methods I applied I do not recall.

Q I'm just trying to determine the extent of your expertise or lack of it, Mr. Halder.

You used the term operating system?

A Yes.

Q Now, are you using it as a generic term or as a specific system?

A IBM has some specific operating systems either OS or DOS or

Q You're aware that OS is also a specific system of the 360 program?

A That is correct.

Does that use the whole program or is that in core or is that capable of partial program use in core? I'm not sure. Are you at all familiar with VS? No, I'm not. Do you know what it means? I do not. You never worked with 370 at all, I take it? Not at all. As to various types of OS, this is the generic term, various types of operating systems as opposed to IBM OS systems, are you familiar with MFT or MVT? I'm not. Do you know what they mean? I think MVT means multivary task, multifix task. Can you explain the difference between the two? I cannot.

Q How about CICS you mentioned before?

A I think that is used in telephone communications systems, I'm not sure what it means.

Q It is not a central information operation system?

Maybe, I don't know, I'm not sure. A Q Is it similar or compatible with IMS? I don't know. A Do you know what IMS is? A No, I do not. You mentioned before some knowledge of the communication area. Are you familiar with the programs used to connect main frames, various main frames and to maintain job streams? No, I'm not. Within systems, for instance, HASP or ASP? No. Do you know what the letters mean? No, I do not. A Are you familiar with higher archial asmerteric multiprocessing systems? I do not... A Page 66 According to your testimony, correct me if I'm wrong, according to your testimony and your

resume the only IBM experience you have is with an IBM 360-30 and that for only six months?

- A That is correct...
- You have no experience with 360-40?

A No.

Q 60?

A Not at all.

Q 65?

A Not at all."

Further specific examples could be set forth as to each advertisement at issue but they would only be repetitive.

The transcript is annexed for the court to review and determine for itself that the sum and substance of the deposition is that Mr. Halder did not possess the minimum qualifications for any job which he applied for and, therefore, this suit is totally lacking in merit.

In light of the above discussion of the total lack of merit, indeed even the frivolous and harassing nature of the suit, there could be no question that the lower court's order dismissing the complaint for failure to prosecute was not an abuse of discretion, the only reason this court has cited in the past for reversal of such a dismissal. Theilmann v.

Rutland Hospital, Inc., 455 F.2d 853 (2nd Cir. 1972), Michelsen v. Moore-McCormack Lines, 429 F.2d 394 (2nd Cir. 1970). In Sokolin v. Estes, 131 F.2d 351 (D.C. Cir. 1942) plaintiff's counsel refused to proceed at trial since plaintiff was not present and counsel had not taken plaintiff's deposition but had moved for an order permitting him to take the deposition of his client. The motion was denied as no such order was necessary

and the trial court ultimately dismissed the complaint. The appellate court, in affirming the dismissal, observed that plaintiff could have had his deposition taken at any time by his attorney and that the attorney's failure to take the deposition was responsible for the dismissal. This case is very similar to ours. As in Sokolin, supra, Mr. Halder, having realized, after being deposed, that his suit was totally lacking in merit, also failed to pursue discovery and was unprepared for trial. The dismissal below was not an abuse of discretion and ought to be affirmed.

In Marshall v. Sielaff, 492 F.2d 917 (3rd Cir. 1974) the Third Circuit recognized that no precise rule could be made as to when a dismissal was justified. It recognized, however, citing Theilmann, supra, that the scope of appellate review is confined a determination of whether the trial court abused its discretion. To make this determination, the appellate court should review the procedural history of each case. The court held that the dismissal there was not an abuse of discretion, as plaintiff refused to proceed with trial because the court had denied his motion for writ ad testificandum for three inmates in prison. As in Sokolin, supra, the similarity to our case is strong.

The <u>Marshall</u> court also indicated that a review of the issuance of the writ under the circumstances at bar would undermine the policy against piecemeal appeals.

"If a litigant could refuse to proceed whenever a trial judge ruled against him, wait for the court to enter a dismissal for failure to prosecute, and then obtain review of the judge's interlocutory decision, the policy against piecemeal litigation and review would be severely weakened. This procedural technique would in effect provide a means to avoid the finality rule embodied in 28 U.S.C.A. §1291." (Page 919)

This is another reason why the decision below should be affirmed. Mr. Halder is seeking piecemeal review.

In <u>Michelsen</u>, <u>supra</u>, this court held that to determine whether there was an abuse of discretion the factual circumstances of each case must be examined.

At the trial below, Judge Mishler, showing particular concern for the rights of the pro se plaintiff, advised defendants that he wanted some affirmative showing that Mr. Malder's case was without merit. Defendants advised the court that such evidence was contained in plaintiff's deposition which affirmatively showed that plaintiff did not possess the minimum qualifications for any job for which he applied. Defendants maintained that the deposition so proved the total lack of merit of this suit that their intention in the trial was merely to cross-examine the plaintiff and bring forth again the admissions in the deposition that he does not possess the necessary qualifications. Even after our intentions were explained to the plaintiff by Judge Mishler, plaintiff still refused to take the stand and Judge Mishler properly dismissed the complaint.

In addition to the above, it should also be noted that this action was brought under Title VII and is therefore time barred. 42 U.S.C.A. \$2000e-5 states that an aggrieved person has 90 days from the date the Commission gives notice of its determination to bring suit. This action was brought beyond that statutory 90-day period as the determination of the Equal Employment Opportunity Commission was dated February 25, 1975, and at his deposition, Mr. Halder testified that it was delivered, certified mail, to his Jamaica Post Office on February 26, 1975, and that he was notified that day but that he did not bother to pick it up. Instead, he waited until it was delivered to him, one month later, on March 25, 1975. (Transcript pp. 69-75). Accordingly, at the time this action was filed, on June 11, 1975, the 90-day period, as properly calculated from February 26, 1975, when plaintiff was notified, had expired and any suit under Title VII was time barred.

All litigation must come to an end. Judge Mishler gave plaintiff an opportunity to present his case and plaintiff could not and did not proceed as he had proven in his deposition he had no case to present. There has been no showing of any unlawful discrimination in this record. Mr. Halder has not shown that his case has any merit whatsoever. There was no abuse of discretion by the trial court in dismissing the complaint, nor has any abuse of discretion been shown by plaintiff. The judgment below should be affirmed.

CONCLUSION

The dismissal below should be affirmed for the following reasons:

- 1. There is absolutely no merit to this action,
- The plaintiff was not prejudiced by the limitation placed on discovery,
- 3. The court did not abuse its discretion in limiting discovery or dismissing the complaint for failure to prosecute.

Respectfully submitted,

WERNER WEINSTOCK Attorney for Defendants

Michael W. Brody Of Counsel (c) Option to Produce Business Records.—Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

§ 2000e-5. Enforcement provisions—Power of Commission to prevent unlawful employment practices

(a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclesure of charges; determination of reasonable cause; conference, conciliation, and persuastor for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; pensities for disclosure of information; time for determination of reasonable cause

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has 'ngaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent")

within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge of, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (b) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, previded that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proce. ling shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

Same: notification of State or local authority; time for action on charges by Commission

(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

Time for filing charges; time for service of notice of charge on responsent; filing of charge by Commission with State or local agency

(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or prelizionery relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(f)(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission

T. 42 U.S.C.A. 55 1985-2010--23 353

sion has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief

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pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

- (3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.
- (4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.
- (5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment ractice charged in the complaint, the court may enjoin the respondent from agaging in such unlawful employment practice, and ortice such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, and or without back pay (payable by the employer, employment

agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000c-3(a) of this title.

Provisions of sections 101 to 115 of Title 29 not applicable to civil actions for prevention of unlawful practices

(h) The provisions of sections 191 to 115 of Title 29 shall not apply with respect to civil actions brought under this section.

Proceedings by Commission to compel compliance with judicial orders

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

Appenta

(j) Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28.

Attorney's fee; liability of Commission and United States for costs

(k) In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

Pub.L. 88-352, Title VII. § 706, July 2, 1964, 78 Stat. 259; Pub.L. 92-261, § 4, Mar. 24, 1972, 86 Stat. 104.

Eistorical Note

References in Text. "This Act", referred to in subsec. (f) (2), is a reference to the Civil Rights Act of 1561. The reference probably should have been "this title", meaning Title VII of the Civil Rights Act of 1561, which is classified to this subchapter.

Rules 65 and 53 of the Federal Rules of Civil Procedure, referred to in subsecs. (f) (2) and (f) (5), respectively, are set out in the rules volumes of Title 28, Judiciary and Judicial Procedure.

Sections 111 and 112, included within the reference to sections 101-115 of Title

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UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

BISWANATH HALDER,

Plaintiff.

CIVIL ACTION NO.: 75C 925

AFFIDAVIT

-against-

INFORMATICS, INC. and EQUIMATICS, INC.,

Defendants.

Derendants.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT J. MILLER, being duly sworn, deposes and says:

- 1. I am an attorney associated with WERNER WEINSTOCK.

 ESO., attorney for defendants in this case. I execute this
 affidavit in opposition to plaintiff's motion for an order
 compelling the defendants to answer Interrogatories Nos. 4, 5 and
 8.
- 2. This is an action by plaintiff seeking relief under Title VII of the Civil Rights Act of 1964, as amended in 1972, 42 USCA 2000e-5 and under the Civil Rights Act of 1866, as amended in 1870, 42 USCA 1981, alleging discrimination by the defendants because of plaintiff's color, religion and national origin. The defense to the action is that the suit was barred because it was

brought more than 90 days after notice of dismissal of the charges filed by the plaintiff with the Equal Employment Opportunity Commission and that the allegations of discrimination with regard to the plaintiff are untrue.

3. The Interrogatories for which plaintiff seeks an order compelling further answers and the defendants' answers follow:

Interrogatory No. 4:

With respect to each and every advertisement Informatics and Equimatics have inserted in publications to recruit computer programmers and analysts from June 1, 1969 to present, state:

- A. Name and address of the publication;
- B. Date of such advertisement;
- C. Name and address of the operating division or subsidiary originating the advertisement;
- D. Number of vacancies advertised;
- E. Number of applications received;
- F. Number of persons interviewed;
- G. Number of persons hired.

Answer to Interrogatory No. 4:

Objected to in that as to Equimatics, prior to its take over by Informatics, it used outside consultants exclusively who may or may not have the requisite information.

Objected to in that obtaining the information requested would be a burdensome and oppressive task for defendant Informatics to do, and the information requested is not likely to lead to relevant, material or admissible evidence. Informatics consists of five departments, each of which did and do their own recruiting and each of which has records

on recruitment kept by its department head on an ad hoc basis. A number of these department heads are no longer employed by defendant Informatics. Additionally, there was recruitment by consultants who may or may not have published advertisements. As to whatever records may exist by Informatics they would be kept in various locations in the New York Metropolitan Area and West Coast. Compilation would be burdensome and oppressive.

Interrogatory No. 5:

With respect to each and every computer programmer and analyst hired by Informatics and Equimatics at any time during the period from June 1, 1969 to present, state as to each such person:

- A. Source of recruitment;
- B. Name and address of operating division or subsidiary where such person was hired;
- C. Name, address, telephone number, social security number, and if alien, alien registration number of such person;
- D. Date hired;
- E. His/her academic training at the time of hiring;
- F. His/her professional experience at the time of hiring;
- G. His/her job duties and responsibilities;
- H. His/her initial compensation;
- His/her color, religion and national origin;
- J. Criteria and standards employed to select the person.
- K. If employment was terminated, date and reason for termination.

Answer to Interrogatory No. 5.

Objected to in that the compilation of

this information is a burdensome and oppressive task for defendant Informatics to do, is not likely to lead to relevant, material or admissible evidence and additionally constitutes an invasion of privacy of defendant Informatics employees.

Notwithstanding the foregoing objections, if plaintiff wishes to inspect the terminated employee and employee files located in River Edge, New Jersey, these records will be made available to him provided that all identifying data contained in these records be deleted from any information shown to plaintiff.

Interrogatory No. 8:

State whether at any time since June 1, 1969 to present, any person of a minority race, ethnic group, religious group, or national origin, has been denied employment as a computer programmer or analyst by Informatics and/or Equimatics for any reason whatsoever. If so, state the following regarding each and every such person:

- A. Name, address, telephone number, social security number, and if alien, alien registration number;
- B. Date of denial;
- C. Reason for denial.

Answer to Interrogatory No. 8:

Defendant Informatics is unable to answer as the applications for employment do now show the datg enumerated in the Interrogatories.

4. Upon information and belief, the facts regarding the defendants' answer to the Interrogatories are that with regard to Interrogatory No. 4, a review of records back to 1969 has been undertaken. Several problems make accurate information gathering virtually impossible. The plaintiff seeks information "with respect to each and every advertisement Informatics and Equimatics

have inserted in publications to recruit computer programmers and analysts from June 1, 1969 to the present." With regard to each advertisement, the plaintiff specifically asked for the name and address of publication, date of advertisement, the operating division originating the advertisement, number of vacancies advertised, number of applications received, number of persons interviewed and number of persons hired.

- 5. For a large portion of the time period covered by the Interrogatories, Equimatics and Informatics were two separate companies. On March 31, 1974, Informatics was acquired by Equimatics. At the time of the acquisition, both sets of records, including files on job applicants not hired or interviewed, as well as help wanted advertisements, were reviewed and discarded.
- building in Fairfield, New Jersey, and the Informatics building in River Edge, New Jersey, the defendants maintained a policy of retaining only those records which are required to be retained by law and those records which are absolutely necessary in the functioning of the business. Therefore, information is not available to supply for each particular advertisement the number of vacancies advertised, the number of applications received, the number of persons interviewed and the number of persons hired for that advertisement.
- 7. In addition, during most of the period that the Interrogatories cover, an outside professional recruiter was engaged by both companies. The recruiter, acting independently, placed advertisements, reviewed resumes, performed initial interviews and negotiated employment arrangements for the defendants.

- 8. In a good faith attempt to supply Answers to the Interrogatories, defendants checked with our recruiter. He is able only to make estimates rather than provide specific information as to each advertisement. Advertisements at the rate of two per month were used. Approximately 50 to 70 responses were received to each advertisement. This totals about 24 advertisements a year, with approximately 1,200 to 1,600 responses per year. The recruiter estimates that on an average, 40 people a year were hired. Based on these estimates, approximately 7,000 to 10,000 applications were received from 1969 to 1974. The recruiter did not retain copies of advertisements used nor breakdown data of the type requested by the plaintiff.
- 9. In addition, the plaintiff at deposition had copies of the alvertisements that he responded to. We believe that further investigation would be very costly and would be likely to yield no more data than that supplied above.
- terminated employee and current employee files are available to the plaintiff for inspection. During such inspection, the defendants request that the plaintiff not be allowed to copy any identifying data from the records. We request this safeguard to protect our employees' rights to privacy. We also request that no names or other personal identifying data of defendants' employees be used in subsequent proceedings in order to protect the employees' privacy.

The burden of examining the files would be equally great for the defendants, as well as the plaintiff. approximately 400 files in question are cataloged in folders. No index card or computer system exists with the requested data. The process involved would be simply to sift through the individual employee folders for the information desired. Such a task would be similar, were it to be performed by the plaintiff or the defendants.

12. With regard to Interrogatory No. 8, requesting the "minority race, ethnic group, religious group or national origin of any applicant denied employment with the defendant," the defendants are unable to answer the Interrogatory. Applications for employment do not show the data requested by the Interrogatories. Such inquiries are not made by the defendants of applicants. Such a practice would be in violation of the New Jersey Administrative Code, Title 13, Subtitle C, Chapter 7.

WHEREFORE, the defendants request that the plaintiff's motion for an order compelling the defendants to further answer Interrogatories Nos. 4, 5 and 8 be denied.

Robert Mille

Sworn to before me this

day of October, 1975.

Commission Expires March 30, 19.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK 2 BISWANATH HALDER Plaintiff Civil Action No. 75 C 925 against -INFORMATICS, INC., and EQUIMATICS, INC., 9 Defendants 10 11 Equitable Life Assurance Society 1285 Avenue of Americas 12 New York City, New York September 10, 1975 13 1130 o'clock p.m. EXAMINATION BEFORE TRIAL of BISWANATH HALDER, the 14 Plaintiff, taken by the Defendants, pursuant to 15 Notice, held at the Equitable Life Assurance Society, 16 17 1285 Avenue of Americas, New York City, New York, on Wednesday, September 10, 1975, at 1:30 o'clock p.m. 18 19 APPEARANCES: 20 BISWANATH HALDER, Plaintiff Pro Se 173-17 65th Avenue 21 Fresh Meadows, New York 11365 22 WERNER WEINSTOCK, ESQ. Attorney for Defendants 23 1285 Avenue of Americas New York, New York 10019 24 BY: MICHAEL W. BRODY, ESQ., of Counsel JOSEPH WILLIAMS, ESQ., of Counsel



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24 25 BISWANATH HALDER, the Plaintiff, having been first duly sworn by Bruce Rothman, a Notary Public in and for the State of New York, testified as follows:

DIRECT EXAMIMATION BY MR. BRODY:

- What is your name?
- Biswanath Halder.
- Where do you reside?
- 173-17 65th Avenue, Fresh Meadows, New York 11385.
- Mr. Halder, my name is Michael Brody. I represent Informatics and Equimatics. Joseph Williams is seated to my right and he's an Attorney who is associated with me and he'll be representing Informatics and Equimatics also and will be assisting me today. We are going to be asking you certain questions today about the lawsuit which you have brought against Informatics and Equimatics, and I expect that you will snawer the questions. If you do not understand the question please tell me you do not understand it and I'll try to make it clearer. If you do not know the answer please tell me you do not know the enswer, I don't want you to guess. I'm not interested. in any speculation. I'm interested in hearing from



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you facts which you know, so if you don't know the enswer please tell me you don't know.

Now, have you ever had your Deposition taken before?

By whom?

By any Attorney?

Yes.

You brought this lawsuit without an Attorney, are you aware of the fact that you could have an Attorney present here with you today?

Yes, I am.

Mr. Halder, would you tell me where you were born, please?

Born in Calcutta, India.

When were you born?

1940.

When did you come to the United States?

A In 1969.

C Where did you come from?

I was in England before I came to this country.

Q How long nad you lived in England?

Approximately two and a half years.

Before living in England did you live in India?



- 11		
		Halder - direct
2	A	No, I lived in Germany for some time.
3	Q	How long were you in Germany?
	A	About s year and s half.
5	Q	Before you lived in Germany where did you
5	live?	
7	A	I was in India.
3	Q	Are you a United States citizen?
,	A	I'm not.
0	Q	Have you filed any papers to become a
1	United St	ates citizen?
2	A	No, I did not.
3	Q	Do you have a green card?
4	A	I do.
5	Q	Does the green card give your immigration
6	status?	
7	A	That is correct.
8	Q	What is your immigration status?
9	Α	Third preference, it just says
0	Q	Do you have your green card with you; why
1	don't we	read that into the record?
2		(Same was handed.)
3		MR. BRODY: Mr. Helder has handed me his
4		green card, I'll read it into the record
		weether then tolden the sub-set the sub-set



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marking it. It reads as follows. This is to certify that Halder, Biswanath,

A-17 space 041 space 120 open paren,
registration number close paren, has been duly registered according to law and was admitted to the United States as an immigrant of Port, NYC, under the category reading month, day, year of entry,
05-31-69, under the category class,
Capital P, 3-1. Under the entry month,
day, year of birth, 07-19-40. Under sex,

M. At the bottom in the left-hand corner is a 45.

Q Mr. Helder, is there enything on the other side of the card, I don't want to pry into your wallet, is there enything that we would want to know.

A Here.

MR. BRODY: On the reverse side of the card is his photograph and explanation of the alien registration receipt card which I'll not read into the record.

Thank you, Mr. Halder.

- Q What country are you a citizen of?
- A I'm s citizen of Indis.

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Do you also hold British citizenship? Q

No, I do not.

Mr. Halder, you're aware that you brought this Complaint against Informatics and Equimatics, ere you not?

That is correct.

Do you have a copy of that Complaint with you?

I do.

I think it might be helpful to you if you were to refer to it along with me. If you will look at page 3, paragraph 6 begins on page 2 and continues through pages 3, 4 and 5. If you will refer to this along with me it will be helpful.

Looking at paragraph 6A, it states that you applied for employment at Informatics on June 4, 1969 and that the application was rejected on June 27, 1969. Do you know what the job was that you applied for?

The job of a computer programmer.

Did you respond to an advertisement in the newspaper?

That is correct.

Did the newspaper advertisement set forth

any criterian of experience or qualifications?

A It must have.

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Do you recall what they were?

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A You want to read it out.

Identification.

(

MR. BRODY: The witness hands me an

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advertisement which we'll mark for

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Q Was this the Ad which you responded to on

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June 4, 1969?

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A That is correct.

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MR. BRODY: Let's get this marked.

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THE WITNESS: Do you mind making the copy

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and return the original to me?

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MR. BRODY: You will have the original

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absolutely, no problem at all.

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THE WITNESS: Instead of putting any kind of mark on the Ad, please make a copy of

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the Ad and mark on the copy.

MR. BRODY: I'll do that only if we can

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retain these and make copies and then return

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them to you.

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THE WITNESS: 1 do not went you to retain the original, please make copies.and retain

the copies.



MR. BRODY: We are entitled to have this marked for Identification, we're entitled to have the original marked for Identification, this is standard operating procedure in lawsuits. If we want to drag this Deposition out for days and weeks we can have each item photocopied as it is produced and then come downstairs and mark the original. THE WITNESS: What I would like you to do, let's go to the photocopying machine, copy all the Ads and replace what you have given to me and then we'll mark it. MR. BRODY: Do you have more here? THE WITNESS: Yes, I do. MR. WILLIAMS: Why don't you wish this, to have it marked for Identification? THE WITNESS: I refuse to give you my original copies and put any kind of marks. MR. BRODY: These will be given back to you, we're entitled to have the original marked for Identification. THE WITNESS: I refuse to allow you to put any kind of markings on the originals.



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MR. BRODY: I'll continue to question you on

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this.

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Mr. Halder has produced a document on newspaper print which he refuses to allow us to mark on the original. On the front side it reads Informatics seeks programmers, analysts. On the back there is written in ink June 1, 1969.

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Q Mr. Helder, do you recall I asked you a few minutes ago what the job was that you applied for on June 4, 1969 and you replied computer programmer, do you recall that?

A That is correct.

Q You handed me a document which said programmers, analysts?

A That is correct.

Q What's the difference between a programmer and an analyst?

A First of all, an analyst analyzes a system and then he gives it to the programmer and the programmer programs the system.

Now Mr. Halder, I'm reading the qualifications here and the advertisement reads in part as follows:

"These positions require Solid 360 experience including knowledge of OS and/or DOS360, plus applications

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programming background." What does the term 360 or 360 experience meen?

That means a programmer who is experienced IBM system 360.

Q What is IBM System 360?

That is one of their machines, one of the machines IBM has manufacturedor do manufacture.

What generation?

Third.

When would that have been manufactured?

Well. I think they introduced the system somewhere around early '60's, '63, '64, '65, somewhere around there.

Did you have prior to 1969 any experience with the 360?

No. I did not.

The advertisement goes on to require "good knowledge of OS", what is OS?

Operating System.

Is that a word of art, does that mean something specific in the computer industry?

They have many different operating systems like Operating System, Disc Operating System or DOS. Tape Operating System, TOS. They have several operating

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systems and OS is one of their operating systems and I think it is the most widely used.

Now, it goes on to refer to DOS360, what does that mean?

DOS means Disc Operating Systems.

Q For the 360 machine?

That is correct.

Did you have any experience in 1969 or before that in OS?

I did not.

Did you have any experience in 1969 or before that in DOS360?

I did not.

Do you know what the Ad meant when it referred to applications programming background?

That means a programmer who programs systems which are application oriented.

Will you explain that, I'm not sure I follow you?

Applications programming means, say, the Equitable Life Assurance Society has a system which calls for, say, the names and addresses of all the policy holders and how much the policy is worth and whether they are paying annual or semi-annual or



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monthly and all that. That is called applications programming.

Q Did you apply for this position on June 4, 1969 in writing?

A That is correct.

Q Do you have a copy of the letter of application with you?

A Usually I do not keep any copies of my covering letters.

Q Did you send a copy of your resume to them?

A I did.

Q Do you have a copy of that resume?

A I do not have a copy of that resume.

Q What did your resume say?

A Do you have a recent copy of my resume?

Q I have no copies of your resume.

A This is one of my resumes. If you go back to May, '69, whatever is there, I had those informations in my resume.

Q Is the resume which you just handed to me your current resume?

A That is correct.

Q On the resume which applies to the June 4, 1969 application did you have the entry on there which



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I did not.

So you had the entry on there only for 6/68-5/698

Whatever I did after 5/09. A

MR. BRODY: Mey we have a copy of this?

THE WITNESS: Yes, you can.

MR. BRODY: We're going to mark this Defendant's B for Identification.

THE WITNESS: If the copying machine is not working right now --

MR. BRODY: It's working.

THE WITNESS: Just mark on a piece of paper that this Ad of June 1/69 will be Exhibit A. MR. BRODY: That's what I'm doing right now. THE WITNESS: Then we'll go to the copying machine and you'll copy the whole thing. MR. WILLIAMS: We'll copy them all end give you back the originals.

> (Newspaper advertisement referred to was marked "Defendant's Exhibit A for Identification, September 10, 1975." and Resume referred to was marked

"Defendant's Exhibit B for Identification

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September 10, 1975.")

MR. BRODY? In order to accommodate Mr. Helder's desires what we are doing is taking the Exhibits which he does not want us to mark, clipping them to a piece of yellow paper and the Reporter is then marking the yellow paper at the top. This will be photocopied so that the photocopy will have on it the Exhibit and on top of the Exhibit the Reporter's mark for Identification.

Now Mr. Halder, your resume indicates that in June, '68 to May, '69 you worked at Honeywell Limited, Hemel, Hempstead, England-Software analyst. What type of machines were you working with when you worked at Honeywell Limited?

- Honeywell Cities 16.
- Did you work with any IBM machinery at all?
- No. I did not.
- Your resume indicates that from August, '67 to June, '68 you worked for International Computers Limited, Stroke-ON-Trent, England-Programmer. What type of work were you doing in programming?

I did write some diagnostic programs.

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A	Diagnostic	programs	for	some	processes	of
M-2140	Computer.					

What type of diagnostic programs?

- Q What is M-2140 Computer, what is that?
- A That is one of the process controlled machines they use to manufacture.
 - Q Who makes that?
- A English Electric Computers Limited, they used to manufacture M2140 Computer.
- Q When you were at International Computers
 Limited did you work at all with any IBM equipment?
 - A No, I did not.
- Q You alleged in your Complaint that your application was rejected on June 27, 1969, was that in writing?
 - A Yes, that is correct.
 - Q Do you have a copy of the rejection?
 - A I do.
 - Q May I see that, please. Thank you.
 - MR. BRODY: May we mark this?
 - THE WITNESS: Not on the original.
 - MR. BRODY: We'll mark it in the same
 - fashion. Latter from Informatics dated
 - June 27, 1969 to Mr. Halder.



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(Letter referred to was marked
"Defendant's Exhibit C for Identification, September 10, 1975.")

Q Mr. Helder, did you appear for an interview in connection with this particular application?

A No, I did not.

Am I correct then that the only communication between you and Informatics was a resume which you sent to them with a covering letter and then their letter shown by Exhibit C to you?

A That is correct.

Q Did you have any conversations with anybody at Informatics concerning your application and rejection?

A I don't think so.

Q Is it your claim that this rejection was caused by discriminatory acts against you?

A That is correct.

In what way did Informatics discriminate against you by rejecting your application?

A They discriminated by rejecting my application.

Q Is it your allegation they discriminated against you on the basis of your color, or your race

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That is correct.

or your religion or what?

Will you tell me specifically what you claim they discriminated against you on, what were the things they were discriminating against you?

A On the basis of my national origin, color, alienage and religion.

Did the resume you sent to them have on it your religion?

No, it does not.

Did the resume you sent to them have on it your color?

No, it does not.

Did it have on it your race? Q

No. it does not.

Do you know who in Informatics discriminated against you on the basis of your religion, your color, your race and your alienage?

Whoever considered my application.

Do you know the name of that person?

I got a rejection letter from Mr. Kaminsky.

Are you saying that it was Mr. Kaminsky then who --

Maybe he, maybe some other person, I cannot A

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of Informatics. Q Are you basing the allegation that they discriminated against you solely on the fact that

tell you. It was definitely some employees or officers

your application was rejected? I did not base solely because only one application was rejected, because I applied --

I'm talking about this particular application?

No. I did not make any kind of allegation to any place either to the Federal Court or to any Administrative Agency because I have been rejected by Informatics only once, that is not the basis of my allegation. Because I applied to Informatics many, many times for year after year, for year after year I have been rejected on each and every occasion. that is the only reason why I have made any kind of allegation against Informatics. If I'm rejected only once I don't mind at all.

You're saying that the June 4, 1969 application was rejected because of some discriminatory conduct on their part?

That is correct.

You are also saying that in rejecting the application they discriminated against you on the basis

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of your race, your religion, your color and your alienage status, is that correct?

A That is correct.

Q Any other reasons?

A No, whatever I have mentioned in my Complaint.

Q Now, you alleged again at Item B on page 3 that you applied for employment on June 8, 1969. Did you apply in response to an Ad?

A That is correct.

Q Do you have that Ad with you?

A I do.

Q May I see that, please?

(Same was handed.)

MR. BRODY: Mr. Helder gives us a photocopy.

Mr. Halder, would you permit us, the
Reporter to make his mark out here?

THE WITNESS: No, I would rather prefer you
mark it elsewhere. Make a copy of that.

MR. BRODY: Absolutely, that's what we'll
do.

The document which Mr. Halder has handed me has in black ink at the top the date June 8, 1969 and I'm asking that the



O

Reporter mark that for Identification.

(Ad referred to was marked "Defendant's Exhibit D for Identification,

September 10, 1975.")

Q Mr. Helder, this Exhibit which is now Exhibit D calls for 360 OS, DOS, experience. It refers to file management system applications. What does file management system applications mean?

A Suppose Equitable Life Assurance Society
has a big file of all their policy holders and all
their employees giving different datas, and that
makes a big system, in whatever way this system is
applied the programmer or the analysts analyzing the
system and the programmer has to program the system
and that's what it mean, that.

Q Had you had any experience before this in file management system applications?

A No, I did not.

Q Now, under that it calls for banking and financial systems, what are banking and financial systems?

A Whatever work a bank does.

Q Had you ever done any banking and financial systems?



Q Now, we come to communications systems,

what are these?

No, I did not.

Bank has meny branches, maybe thirty, or forty or fifty branches in New York City and a person who has a servicing account in one branch he could withdraw from another branch and the teller who gives him the money -- suppose a person has his account in branch 3 and he withdraws some money from branch 26, then the teller at branch 26 he sends the message from the teletype to branch 3 that such and such a person has withdrawn, say, \$3,000, and the way this message is sent through telecommunications lines, that is called communications systems.

Q Had you had any experience in that prior to 1969?

A Not writing any telecommunication program, but I do have a degree in electrical engineering and I specialized in line communication and electronics, therefore I had the fundamental concept.

Q What are line communications?

A It means something from one place to another through an electronic circuit.



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Q The job that you applied for was it programmer or analyst?

A Programmer. I think all that I said in my resume at that time was programmer, but it doesn't make any difference, I mean.

Q I'm asking you what it was.

Now, did you send the same resume for this position on June 8, 1969 that you sent a few days before on June 4, 1969?

A I do think so.

Q Did you receive any response from Informatics after you sent in your resume to this particular Ad?

A No, I did not, not to my knowledge.

Q You do not have a copy of the covering letter, do you?

A No, usually I do not keep it.

Q What do these letters usually say?

A They usually say, Dear Mr. Kaminsky, in reply to your advertisement for programmers in the New York Times of such and such date may I request you to consider my candidature. Resume of my experience and academic background is enclosed for your perusal. I look forward to hearing from you, Sincerely yours.

Q Do you allege that the reason you didn't

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A That is correct.

hear from them is because they were discriminating

Q Are you claiming that they discriminated against you on the grounds of color, religion, national origin and slienage?

A That is correct.

Q Do you know the names of anybody other than Mr. Kaminsky who may have been involved in the discrimination as it applied to the application of June 8, 1969?

A I do not.

Q Had you had any conversations with anyone at Informatics relative to this particular application?

A I don't think so.

Did you appear for an interview?

A I did not.

Q Now, we go down to C and it refers to an application for employment at Informatics on October 6, 1969. What was the job that you applied for?

A Same job, programmer.

Was it in response to an Ad?

That is correct.

Q Do you have a copy of that?



A I do.

Q May I see that, please?

(Same was handed.)

MR. BRODY: Mr. Halder hands me a document that has in big bold letters at the top the word programmers. We won't have this marked now under our arrangement.

Mark this please.

(Ad referred to was marked "Defendant's Exhibit E for Identification, September 10, 1975.")

Q The application refers to proprietary turn-key communications systems, would you explain to me what that means?

A Well, turn-key means, I think, that the entire system, not a part of it, from beginning to end, whatever job you have to do.

Q Does proprietary mean anything?

A I cannot give you the exact definition.

Q Did you have any experience before this date in proprietary turn-key communications systems?

A No, I did not.

Q Now the next line under that it refers to on - line financial systems, what does that mean?



'

A On-line meens, as I explained to you earlier, that a person has an account, say, at Chase Manhattan Bank at branch 3 and from brt. 126 he withdraws some money, they have some on-line systems which is working all the time. He goes to a teletype and he sends a message to branch 3 that such and such person has withdrawn \$3,000 from such and such account, that is called an on-line system.

MR. WILLIAMS: I believe the question Mr.
Brody asked was for you to define what an
on-line system is, not what a communication
system is. Can you define an on-line
system?

THE WITNESS: It means the same thing, it's the same thing. On-line communication systems.

MR. WILLIAMS: What's an on-line system?

THE WITNESS: On-line system means that it is working all the time. As I explained to you, Chase Manhattan Bank has a system, communication system.

MR. WILLIAMS: What do you distinguish on-

THE WITNESS: Betch processing system means,



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Chase Manhattan Bank has so many service accounts, say, they have 5,000 accounts, each and every day they run a system how many people have deposited how much money in their account and how many people have withdrawn, that is called a batch processing system. At the end of the day they run the system, on-line system is working all the time, as long as the bank is open whenever a person can withdraw money or deposit money, that is called on-line telecommunication system. Do you understand the difference between on-line and batch processing systems? MR. WILLIAMS: I was a manager in systems for many years, I'm very well aware of it as you will see when my questioning begins. Now, the advertisement refers among other

Q Now, the advertisement refers among other things to programmers with PL, that's in caps, PL-1. What is PL-1?

- A That is one of their programming languages.
- Q What's it mean?
- A Programming language 1, that's what IBM calls.



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In 1969 and prior to that had you had any experience in PL-1?

No. 1 did not.

After that it refers to, and this is in caps, BTAM/QTAM. What does that mean?

Some of the access methods.

What do you mean by access methods? Q

The way they access a system. AM stands for access method, some of the terminologies they use, some of the ways they have access to the system.

I'm not quite sure I follow you, when you mean access to the system, what exactly are you referring to when you use the phrase access to the system?

They have different systems. For example, as I say to you DOS, OS, DOS operate on, it is on the disc and they have different systems; how do you access to the systems, different methods, different programs.

What is the difference, if any, between BTAM and QTAM?

I'm not sure, I do not know.

In 1969 and prior to that had you had any

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experience in working with BTAM and QTAM?

A I never worked either, I have never written any program by applying B-time or Q-time.

Q The Ad goes on to refer to communications and/or massage switching experience. You have told us what communications is, what does message switching experience mean?

A Message switching means if you transmit
a message to one center to another center.

Q Does that differ from what you have been telling us about communications systems and on-line financial system?

A It is part of the same thing.

Q Have you had any experience with that?

A No, I did not.

Now we go to item D on page 3. You allege there that you applied for employment at Informatics on June 20, 1970 --

A July 20th.

Q I beg your pardon, July 20, 1970. Did you apply for a programmer job?

A That is correct.

Q Did you apply in response to an Ad?

A They inserted the Ad quite a few months ago,

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efter I lost my job.

applications.

May 3, 1970.

Q

Forced?

but on July 20th I made hundred of forced applications

That is correct. That means I was not

At that particular time there was not any

No, the Ad was inserted by Informatics on

Is that the Ad you were responding to?

responding to a particular Ad, I just made several

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Let's take a look at that? (Same was handed.) Now, this Ad refers to analyses and programming or marketing. For purposes of our questioning here I take it that you were not, you had no background in marketing, is that correct?

specific Ad you were responding to?

That is correct.

No, I did not.

The portion of the Ad referring to analyses and programming states that it wants senior level openings and goes on to state that it wants strong experience in at least two of the following areas, and then refers to brokerage or banking

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operations. What ere brokerage operations?

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of the application concerns with the accounts they have.

Q Would you repeat that?

A Most of the applications is with the accounts they have, the name, address, account number and what are the positions they have and the stocks they have, the debit balance and credit balance and whatever dvidend came in and this type of things.

A Whatever the stock brokers do, like most

Q Did you have any experience in brokerage operations?

A No, I did not.

Q In 1970 or before?

No, I did not.

Q Now we go to banking operations, what specifically does that refer to?

A As you know, a bank does, each and every bank do many different kinds of jobs concerning the accounts.

Q Hed you worked in any banking operations prior to 1970?

A Yes, I did.

Q Would you tell me what banking operations

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you had ione in 1970 and prior?

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SHORTHAMO

A In 1969 while I was working at the Penta Computer Associates they got a contract from Savings Bank Trust Company and I worked on that project for a few months.

Q What exactly did you do on that project in those few months?

As far as I recall that was a deposit activity analysis system. They had different accounts, the Savings Bank Trust Company had different accounts and the money they were depositing or withdrawing or something like that.

Q What exactly did you do in so far as that operation was concerned?

A I programmed in part of the system, I programmed a part of the system,

What part of the system did you program?

A I do not recall exactly.

Q Aside from these few months in 1969 did you have any other experience with banking operations?

A No, I did not. Before I worked on that project I did not have any experience with banking applications.

Q Now, the Ad also states that it seeks



experience of at least two years -- I'm sorry, it states that it seeks experience in 360 Assembly Language, what is 360 Assembly Language?

A 360 is IBM 360 manufactured by IBM and Assembly Language is Assembly Language they use on that particular machine.

Q What do you mean by that last phrase,
Assembly Language they use on that particular
machine?

Language or in compiler language. Assembly language when you write an instruction that takes place one word in the core. Assembly language, an assembler translates the assembly language into machine language, that means in ones and notes. Other than that, the machine doesn't understand anything. And a compiler language is either COBOL or FORTRAN and a compiler compiles that language and then it is translated into machine language in ones and notes.

Q The Ad further goes on to speak to teleprocessing, what is teleprocessing?

A I think I have already explained that to you.

Q You may have explained it to me using another term, would that be the same as what --

...

A On-line systems or telecommunication systems, it means the same thing.

Q That's fine, as long as you tell me that.

Now, the Ad goes on to state that you should have a minimum of two years experience in at least two of these items. Did you have experience in this teleprocessing other than what you have explained to me before? There was a period of time you see between the 1969 application and this, so I want to know?

A In 1970 for a few months I worked with

Darus Dat-Com Limited, and the project I was working

over there was a telecommunications system.

Q How many months were you on that?

A Approximately three and a half months, April, May, June, July of 1970.

Q What were you doing so far as that particular system was concerned?

A We were on the initial stage of designing a system.

Q When you applied for this job in July, 1970 did you send in a resume?

A I did.

Q Do you have a copy of that resume?



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I do have maybe two or three or four copies of my resumes, but I cannot tell you exactly which copy I sent in at that time, but all my resumes contain virtually the same information what you're seeing in this one.

So if we --

The only difference was when I prepared my resume in 1970, my age was thirty, that was the only difference.

The application and resume which you sent in, would that have included everything on here from 4/70 to 7/70?

A Yes, if I applied after '70 it includes everything.

In your Complaint you say you applied on July 20, 1970, so would that include --

A I made up that resume more or less at that time, the resume sometime in July of 1970 and the resume I sent into Informatics may not contain virtually every word what I have written in this resume, but it contained virtually the same type of information.

The experience you had at Darus, did that include working with any IBM equipment?

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No. It was on Honeywell H-316 equipment. A

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Before 1970 and up through July 20, 1970 had you done any work on 360 Assembly Language?

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Yes, I did.

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What work did you do with 360 Assembly Q Language?

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I think I slready told you, I worked on

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a banking project.

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How long were you at Pents Computer Associates, six months?

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From June, '69 to December, '69, a little

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over six months.

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During that six-month period did you have any experience with IBM equipment?

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A I did.

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Q What equipment during that six months did you work with?

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A IBM 360, I think it was Model 30.

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Q Were there any other models besides the

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number 30, any other models which you had experience?

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No, I don't think so, not other than that what I work at.

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You state during this six sonths you participated, and I'm reading from Exhibit B, in the



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programming and implementation of a deposit activity
analysis system, that was the banking experience that
you had?

A That is correct.

Q In your resume, Exhibit B, you refer to the key-logic system on the Redcor 70 midi-computer, is that IBM equipment?

A No, that is Redcor, the Redcor Corporation manufactured that equipment.

MR. BRODY: Would you mark this now, we're marking for Identification the advertisement which formed the basis for the application on July 20, 1970.

(Advertisement referred to was marked "Defendant's Exhibit F for Identification, September 10, 1975.")

specifically from Exhibit F which is the Advertisement we have been talking about in connection with the July 20, 1970 employment and the document reads

"strong experience in at least two of the following areas is essential. Brokerage or banking operations, other commercial applications, 360 assembly language, teleprocessing, or on-line systems design and



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programming. You must have a minimum of two years experience - the more experience the better."

Did you have a minimum of two years

experience in at least two of the items that I have

read to you?

A Yes, I did.

Q What of these items did you have two years experience in?

A I had approximately three years of experience in programming digital computers.

Q No, no, did you have a minimum of two years experience in brokerage or banking operations?

A I did not have a minimum of two years experience in any particular thing, but I had more than two years experience in a combination of a number of things.

Q Please, you have to answer the questions which I have asked of you and your answer previously just was not responsive so I'm going to break it down.

Did you have two years experience in brokerage or banking operations?

A I did not.

O Did you have it in other commercial applications?

Halder - direct

A	No.	I	did	not.

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- Q Did you have two years experience in 360 assembly language?
 - A No, as I said to you --
 - Q Fine, you have to answer the questions.
- A I had more than two years experience in a number of different things.

MR. BRODY: I move to strike that testimony, it is just not responsive.

We'll go down for rulings at an appropriate time if we have to.

- Q Did you have a minimum of two years experience in 360 assembly language?
 - A No, I did not.
- Q Did you have a minimum of two years experience in teleprocessing?
 - A No, I did not.
- Q Did you have a minimum of two years experience on on-line systems design and programming?
 - A No, I did not.
- Q Mr. Halder, we go to Item E in your Complaint on page 3. There you state that you applied for employment at Informatics on September 27, 1970. What was the job that you applied for?



Halder - direct

A	Same	job,	computer	programmer.
---	------	------	----------	-------------

You'll forgive me for persistently asking that question, it's just one of the necessary things we have to ask, it might seem a little redundant to you, I'm sorry, we have to ask it.

A I applied for only one type of job at Informatics, computer programmer. They may call it programmer, they may call it analyst, they may call it softwere designer, they may say anything, they may say vice-president, it all means the same thing.

- Were you responding to a particular Ad?
- That is correct.
- Do you have a copy of that Ad?
- I do.
- May I have a copy? Q MR. BRODY: Mr. Halder has handed me a newspaper advertisement. On the bottom is written in ink, 9/27-1970. At the top in big bold letters is the word programmers and at the very bottom appears the legend

Would you mark this for Identification. (Ad referred to was marked "Defendant's Exhibit G for Identification,

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Informatics, Inc.

Julius P. Jambonan

Hølder - direct

September 10, 1975.")

- Q You made this application on 9/27/1970?
- A That is correct.

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- Q The previous application you made was on July 20, 1970?
 - A That is correct.
- Q Between July and September of 1970 what were you doing?
 - A I was looking for a job.
 - Q Were you employed at all?
 - A No.
- Q Were your qualifications in any way changed for this position that you applied for in September of 1970?
 - A No, it did not.
- Q Now, the resume you sent in, would that include all the information you had on Exhibit B?
 - A That is correct.
- Item F -- excuse me, before we go there, you state in your Complaint that this application of September 27, 1970 was rejected on September 30, 1970. Do you have a copy of the rejection?

A I do.

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May I see it, please? Q

(Same was handed.)

MR. BRODY: Mr. Halder hands me a letter

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from Informatics dated September 30, 1970,

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I'll mark that for Identification.

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(Letter referred to was marked

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"Defendant's Exhibit H for Identifica-

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tion, September 10, 1975.")

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Mr. Halder, do you have rejection letters

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dated November 18, 1969 from Informatics?

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Yes, I do.

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MR. BRODY: May I have that and we could

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mark that.

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(Same was handed.)

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MR. BRODY: Mark that please.

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(Letter referred to was marked

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"Defendant's Exhibit I for Identifica-

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tion, September 10, 1975.")

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MR. BRODY: We have a letter from Informatics dated August 24, 1970 which we'll mark as

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Exhibit J for Identification.

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(Letter referred to was marked

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"Defendant's Exhibit J for Identifica-

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tion, September 10, 1975.")



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	Q	Now	Mr.	Halo	ier,	do	you	have	any	other	letters
of	reject	ion	goine	g up	thr	ough	Ser	tembe	er 3	0, 197	0
wh:	ich we	have	not	mari	ced?						

A No, I don't think so.

Q Now we can proceed to Item F on page 4.

You allege there that you applied for employment at
Informatics on January 11, 1971. Between January 11,
1971 and September 27, 1970 the date of your last
application, what were you doing?

A I was primarily looking for a job.

Q Were you employed at all?

A I started with a brokerage firm, I mean
I was trying to sell mutual funds at the time.

Q You were trying to sell what?

A Mutual Funds.

Were you working in the computer field at all?

A No, since July, 1970 I did not work in the computer field.

Q Were you replying to a specific Ad in January of 1971?

A That is correct.

Q May I see the Ad, please?

(Same was handed.)



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MR. BRODY: Mr. Helder hands us a very small Ad which goes programmers: soft wear systems, engineers.

Please mark that.

(Ad referred to was marked "Defendant's Exhibit K for Identification, September 10, 1975.")

Q Mr. Halder, this Ad calls for programmers:
Software systems engineers. Is there any distinction
between the term programmer and software systems
engineers?

A They may carry out different functions.

It all depends what the employer wants to call a person.

Q Was this Ad in your understanding seeking people for two different types of positions?

A May I have a look at that, please?

Q Surely.

A Yes, they are calling for software systems, engineers.

Q My question is is that different from programming?

A A programmer when he performs a certain kind of job he may be called a software systems engineer.

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The programmer when he is performing field and marketing support then Informatics is calling him a software systems engineer.

- Q Are all programmers software system engineers?
 - A No. I don't think so.
- Q Are all software systems engineers, programmers?

A In some cases, yes and in some cases, no.

A programmer when he is supporting --

Q Please, I don't want you to volunteer anything that is not responsive to the question.
You have answered my questions adequately.

Now, the Ad states that they seek a software systems engineer to perform field and marketing support for Informatics, Mark IV, that's a Roman IV, and Data Base Management System. What does the phrase field and marketing support mean?

A That means supporting the marketing staff, working on the customer's premises rather than working on Informatics Home Office. They have installed some systems in customer's premises and whatever support they need, whatever help they need, software system engineer is going to give that help or that



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support to the customer.

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Q Do you know what the reference to Mark IV

Data-Base Management System means?

A That is one of the data base management systems, I'm not familiar with that.

MR. WILLIAMS: You're not familiar with Mark IV?

THE WITNESS: I'm not, I did never write any program, never operated a system, never worked on any system which used Mark IV.

Q In any way did your qualifications in the computer field change from September, 1970 to January, 1971?

A No, it did not.

and that requests -- I'm sorry, that alleges that you applied for employment at Informatics on September 5, 1971. May I ask is that in response to any particular advertisement that you say?

A That is correct.

Q Do you have a copy of that?

A I do.

Q May I see it, please?

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(Same was handed.)

MR. BRODY: Mr. Helder has given me an Ad from the Sunday New York Times of August 29, 1971 and we'll mark that for Identification.

(Ad referred to was marked "Defendant's Exhibit L for Identification, September 10, 1975.")

Q Now Mr. Helder, between September 5, 1971, the date you made application and January 11, 1971 were you employed in the computer business?

A No, I never had employment in computer industry since July, 1970.

Now, the resume which you sent in response to this advertisement as well as the resume you sent in response to the January advertisement would essentially contain all the information here on Exhibit B, is that correct?

A That is correct.

Q Now, this Ad states very general terms
that applicants should have two or more years
experience in business data processing. Does
that phrase business data processing mean anything
specific in the computer field?

A Yes, that means it's an application,

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business application of computer.

Q I don't quite understand exactly what you mean when you state it means business application of computer.

machine. Basically there are two different types of calculations in this world either commercial or business and scientific. You can apply computer to do business or commercial calculations and that is called business applications or it can be applied to do scientific applications, that is called scientific applications.

Q Had you had any background in scientific application?

A Yes, I did.

Q Now, aside from the testimony you have given here today had you had any other experience in business data processing?

A Whatever is stated in my resume I have those experiences and the only thing I did not state in my resume is that in England I attended some computer programming courses, but they don't have any academic value therefore I did not include that in my resume.



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	Q	Your	qualifications	did	not	change	since
ulv	of	1970?					

- A That is correct.
- Q We go to Item H. You state that you applied for employment at Equimatics on December 27, 1971?
 - A That is correct.
 - Q Do you have a copy of any advertisement?
 - A I do.
 - Q May I see that, please?
 (Seme was handed.)

MR. BRODY: Mr. Helder has handed me an Ad. At the top left corner is the legend BER 19-1971 so we can identify it.

Would you mark this as Exhibit M.

(Ad referred to was marked "Defendant's Exhibit M for Identification,

September 10, 1975.")

Q Mr. Helder, this Ad which is Exhibit M calls for people who have background in insurance operations in the end of 1971 and prior to that date.

Did you have any experience in insurance operations?

A No, I did not. Whatever, as I said to you, whatever experience I had with computers is from



August, '67 to July, 1970 and everything is in my resume.

Q Now, at some point here in the long list of qualifications it says we are seeking individuals with experience in IMS-DL/1 in designing and implementing applications; what does that mean?

A IMS, I'm sorry, I don't know, because I did never work on this type of systems.

g It talks about design of large on-line systems. You have explained what on-line systems are and you have out-lined some of your previous experience there; were you ever involved in the design of large on-line systems?

A As I said to you earlier, I worked only on one on-line system, but that was not large.

I would say that was medium size.

It also calls for people with experience in Data-base Management Systems in structuring; what does that mean?

A I did not have any experience.

Q I asked you what it meant.

A I'm not one hundred percent sure, because
I did never work on Data Base Management. What Data
Base means that you put a lot of datas, a lot of



informations on a particular, say, either tape or drum or disc, usually on a magnetic device and then whatever information you need from that data base you get it by writing a program, you write a, write a particular program and whatever information you need you get that information, that's what it means, but I never work on that kind of project.

Q It also seeks people in experience in selection of terminals and software and hardware configurations. What does this mean?

A It means that you can use many different machines manufactured by different manufacturers, which one is more suitable to your particular needs, that's what you select. You have to find out, you have to find that out.

Mad you ever been involved in any job where you had to do this type of selection?

A No, I never selected any particular hardware for any particular project, but I did work on a number of machines and a number of different types of applications.

Q One of the other things is messageswitching system implementation using the ICS-500 or CONTEN-60. What does that mean?

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mean	the	same	thing.						

- Q What is the reference to ICS 500 mean?
- A I'm not surs.
- Q What is the reference to COMTEN-60 mean?
- A I do not know.
- Now, we go down to Data Center Management where they seek people with experience in that; what does Data Center Management refer to?

A That means they have data center that do different types of Jobs in that data center, and whoever manages that data center he is called a manager of that data center.

- Q Have you ever done any data center management?
 - A No, I did not.
- Q Now we come to another item of experience.

 They are looking for CICS Systems programming. What does that mean?
 - A I think that is a part of access methods.
- Q Now we are getting into something you seid you think --

A I did not work on any CICS application.

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Q What does the CICS refer to?

I think that is part of this telecommunication application, that is a method by which you access to a certain system. I'm not sure, as I said I never worked on that.

Q I don't want you to speculate, and you said you're not sure and we'll leave it at that.

Design and implementation of systems using Mark IV is another category?

A I never used Mark IV.

Q Is Mark IV something that would be peculiar to Informatics or Equimatics?

A May or may not be.

Q Now we come to another item of experience, communications and network configuration systems design. What does that mean?

A It is the same like what I have explained to you earlier like on-line systems, telecommunications system, message-switching. In telecommunication system there are many different terminals located in different places and that is called a network.

Q Now, the last item is monitoring and control of network and terminal operations. What does that mean?

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- Q Hed you done any of that in your previous experience with on-line system?
 - A No, I have worked on-line systems.
- Q If you'll take a look at letter I. Now you state here in Item I that you applied for employment at Informatics on February 3, '72?
 - A That is correct.
 - Q Was this in response to a particular Ad?
 - A That is correct.
 - Q May I see a copy of that Ad?

 (Some was handed.)
- Q Just before we have this marked, the resume you sent in would have had the information in Exhibit B on it, is that correct?
 - A Yes.
- And also for the one on December 27th, the resume would have had the information?
 - A The same.
- Q It's the same resume, but I mean the information is the same?
- A It is the same information, it may not be word for word, but factually the same information.



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MR. BRODY: Mark this, please.

(Ad referred to was marked "Defendant's Exhibit N for Identification, September 10, 1975.")

Q Now Mr. Halder, this advertisement seeks people with a background in Sigma-3/5/6/7 experience. This is the first time in this Deposition that this terminology has come up and I'd like to know if you could explain to me what Sigma-3/5/6/7 is?

A I think Sigma Computer used to be manufactured by Scientific Data Systems.

Q Had you had any experience with that?

A No. Whatever experience I had, I mean everything is in my resume.

Q I know, you have testified to what your experience was, but as something new comes up we have to explore it to see if there is anything that we have overlooked.

A That is also digital computer and as far as I know that used to be manufactured by Scientific Deta Systems.

- Q The Ad also refers to 360 TP. What is that?
- A The P stands for teleprocessing.
- Q What is the 360?

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- Q You testified before that you had some experience with the 360 equipment?
 - A That is correct.
- Q Did you have any experience specifically with 360 TP?

A No, I did not. I think I mentioned very specifically that I had only, I wrote only one program on IBM360 and that was a batch processing job on IBM360.

- Q The Ad also refers to IMS application design. What is that?
 - A I don't have any experience in IMS.
 - Q Do you know what it is?
 - A No.
- Q And your experience would be essentially as is stated on Exhibit B?

That is correct.

Q The application you say was rejected on February 16, 1972. Do you have a copy of that?

(Same was handed.)

MR. BRODY: Letter dated February 16, 1972 to Mr. Halder from Mr. Levy of Informatics.

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Halder - direct

Mark that for Identification.

(Letter referred to was marked

"Defendant's Exhibit O for Identification, September 10, 1975.")

MR. BRODY: We have also in response to my question Mr. Halder has produced a letter dated January 6, 1972 from Equitmetics to him.

> (Letter referred to was marked "Defendant's Exhibit P for Identification, September 10, 1975.")

Now Mr. Halder, these letters use the form of address as Bisu Halder?

That's my nickname. Like William is called Bill. Anthony is called Tony.

Now, going to Item J, you say you applied for employment at Equimatics on February 3, 1974. Was that in response to a particular Ad?

That is correct.

May I see the Ad?

(Seme was handed.)

The resume again, whatever resume you would have sent would have the same information as Exhibit



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A Yes.

MR. BRODY: Item J, February 3, '74.

Mark this, please.

(Ad referred to was marked "Defendant's Exhibit Q for Identification, September 10, 1975.")

EXAMINATION BY MR. WILLIAMS:

at least two years experience in 360, 370, BAL, and intervals of one of the following. VM, VS, OS, CICS, HASP, ASP."

According to your prior testimony and the resume you have as Defendant's Exhibit B, you have no experience in any of those areas, is that true?

A I have some experience only in DOS, not in any other operating system what you mentioned.

Q Are you familiar with, for instance, VS?

A No, I'm not. The only thing I'm familiar with is DOS.

Q Did you receive a letter from Equimatics dated February 13, 1974?

A Yes.

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Q May we have the letter?

(Same was handed.)

MR. WILLIAMS: We'll mark that as Defendant's R.

(Letter referred to was marked
"Defendant's Exhibit R for Identification, September 10, 1975.")

- Q Sub-paragraph K of the Complaint, Mr.

 Halder, states that you applied for employment at

 Informatics on May 13, 1974. Was that in answer to a specific Ad?
 - A That is correct.
 - Q Do you have a copy of that Ad?
 - A I do.

(Same was handed.)

MR. WILLIAMS: Mr. Helder has given me an Ad from the New York Times of May 12, 1974 which should be marked as Defendant's Exhibit S.

(Ad referred to was marked "Defendant's Exhibit S for Identification, September 10, 1975.")

Q Do you also have a letter of rejection dated May 15, 1974?



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Helger - direct

A	That's	the only	letter I	have.	
	MR. WII	J.IAMS: M	rk this,	please,	88
	Defende	nt's Exhi	bit T.		

(Two sides of letter of rejection dated May 15, 1974 referred to was marked "Defendant's Exhibit T for Identification, September 10, 1975.")

- Q Your qualifications have not changed at that point, is that correct?
 - A That is correct.
 - Q Hed you had any experience in VM/CMS?
 - A Not at all.
- q in any of the control systems or operating systems as IMS?
 - A No.
 - Q Any time sharing experience?
 - A Time-sharing, no.
- Q Any experience in life, health or property casualty insurance applications?
 - A No, I did not.
 - Q Data base and file management systems?
 - A No, I did not.
- Q You have already testified as to Mark IV you had no experience?

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- Q The Complaint further states you applied for employment at Informatics on November 26, 1974?
 - A That is correct.
 - Q Is that in answer to an advertisement?
 - A That is correct.
 - Q May I have the advertisement, please?

 (Same was handed.)

MR. WILLIAMS: Mark this Exhibit U.

(Advertisement referred to was marked
"Defendant's Exhibit U for Identification, September 10, 1975.")

- Q Is it not true, Mr. Halder, this Ad asks specifically for 360/370 programmers?
 - A Maybe.
- Q I believe the advertisement speaks for itself, at the top it states --
 - A That is correct.
- Q In addition it states "we maintain the most up-to-date software and data-base management systems available utilizing 371/58 employing VM/CMS, OS, HASP, IMS and Mark IV on a national network basis." Your prior testimony and the resume indicates that you



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were inexperienced in all of these areas, is that true?

I That is correct.

Q Mr. Helder, you stated before you differentiated rather between basic assembly language and COBOL and FORTRAN?

A That's right.

Q Would you distinguish for me the difference between COBOL and FORTRAN?

A COBOL stands for commercial or business oriented language and FORTRAN stands for formula translation. COBOL is a commercial language and FORTRAN is a scientific language, it is used in scientific applications and COBOL in commercial applications.

Q What is the difference in the different instructions used in each?

A I don't know, because I did never write a single program either in COBOL or FORTRAM.

Q Only in BAL?

A Only in assembly language. Four different machines.

Q You mentioned that you had no experience in Merk IV?



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A That is correct.

you believed that Mark IV was particular or may have been particular to Informatics?

A I'm not sure, maybe, may not be, I don't know.

Q Isn't Mark IV a widely used program for report processing?

A Maybe, I don't know.

Q Are you familiar with the various disc access methods we have mentioned before?

A No, as I say to you earlier, I worked only on one IBM 360 project, that is to operate on DOS, and I do not recall exactly what access method they had been using.

Q Are you familiar with SAM?

A No.

Q Are you familiar with ISAM?

A No, I'm not.

Q Are you familiar with QSAM?

A No, I'm not.

Q Do you know even what they mean?

A They are some access methods, but I never bothered to know.

Halder - direct

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Q You already testified you are unfamiliar with BTAM and QTAM?

- A That is correct.
- Q What about BDAM?

A Everything, all the access methods, as I said to you I worked only on one IBM 360 project and what access methods I applied I do not recall.

Q I'm just trying to determine the extent of your expertise or lack of it, Mr. Halder.

You used the term operating system?

- A Yes.
- Q Now, are you using it as a generic term or as a specific system?

A IBM has some specific operating systems either OS or DOS or --

Q You're aware that OS is also a specific system of the 360 program?

A That is correct.

Q Does that use the whole program or is that in core or is that capable of partial program use in core?

- A I'm not sure.
- Q Are you at all familier with VS?

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A No, I'm not.



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As to various types of 03, this is the

I think MVT means multivary task, multifix

Cen you explain the difference between

How about CICS you mentioned before?

It is not a central information operation

I think that is used in telephone

communications systems, I'm not sure what it means.

opposed to IBM OS systems, are you familiar with MFT

Do you know what they mean?

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- Do you know what it means? Q
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- Q You never worked with 370 at all, I take it?
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- Not at all.

I do not.

I'm not.

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Q You mentioned before some knowledge of the

A No, I do not.

communication area. Are you familiar with the programs used to connect main frames, various main frames and to maintain job streams?

A No, I'm not.

Q Within systems, for instance, HASP or ASP?

A No.

Q Do you know what the letters mean?

A No, I do not.

Q Are you familiar with higher srchial asmerteric multiprocessing systems?

A I do not.

Q We have, of course, noted all of these have been referred to in each of these advertisements?

A Not each, in some of them.

Q Each of the phrases has been referred to in various advertisements?

A Not in all advertisements. In some of the advertisement some of those phrases have been mentioned.

Q Each of those phrases have been mentioned in at least one of the advertisements?

A I can show you some Ads where none of those

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Q According to your testimony, correct me if I'm wrong, according to your testimony and your resume the only IBM experience you have is with an IBM 360-30 and that for only six months?

A That is correct.

phrases have been mentioned.

You never worked --

And before that I did never have any experience with any IBM equipment.

I'm saying that that is your only IBM experience?

That is correct.

Q It is only with a 360-30?

That is correct.

You have no experience with 360-40? Q

No.

60?

Not at all.

Q 65?

Not at all.

You stated before you're not presently working?

That is correct.

Your resume goes up to July, 1970?



Helder - direct

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A That is correct	CL	
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- What have you been doing since July, 1970?
- A I have been primarily looking for a job.
- Q You haven't worked at all during that period?
 - A Not in my field.
 - Q In what field have you worked?
- A I have worked, I have done different things like selling Mutal Funds, I worked as a stock broker, life insurance agent and all this nonsense.
- Q Would you say these jobs occupied more than fifty percent of the time since 1970?
 - A That is correct.
 - Q More than seventy-five percent of the time?
 - A That is correct, all my time.
 - Q So you have been employed --
- A Since July 1970 I did never have salaried employment.
 - Q But you have been earning an income?
- A Yes, that is correct. Most of the time, not all the time.
 - Q What are you presently doing?
 - A I'm not doing anything.
 - Q For how long?



CONSCIUNTED STENOTYPE REPORTERS . MAIN CHECK TO M. TOUS A: THE PLACE THE TIEST SHE OF 7500 A SECOND STEEL OF SHEET OF 4271

Halder - direct

A	That	is t	his	week.		
Q	What	were	you	doing	last	week?

Q I notice on your resume your draft status

I was working as a stock broker.

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A Yes.

Q What is that, I'm unfamiliar with that status, are you sware of what it is?

A I think that means there is no possibility of getting called unless some national emergency occurs or something like that.

Q You're not really sure?

A No.

Q Mr. Helder, you filed a charge with the Equal Employment Opportunity Commission?

A That is correct.

Q In February of 1972, is that right?

A I should think so.

Q I take it from your Complaint, so let's both agree?

A February 22, 1972, that's what it states.

Q And with the New Jersey State Division of Civil Rights?

A Yes.

SHORTHAND STATES

CONSULIDATED STENOTYPE REPORTERS • MAIN OFFICE 226 Westhury Ave. Carle Plane, N.v. 11514 (516) 997-7500

**Rew York City (212) 895-9493 • Suffok (516) FO 8-4221

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Q	Was	there	in	either	case	a	finding	of
probable	cause	?						

A There was not, a finding of no probable cause.

Q And the determination by the Equal Employment Opportunity Commission, I show you now that determination, a copy of it, dated February 25, 1975.

(Same was handed.

MR. WILLIAMS: I ask that it be marked.

MR. BRODY: That is our copy.

MR. WILLIAMS: Defendant's V.

(Determination referred to was marked "Defendant's Exhibit V for Identification, September 10, 1975.")

Q Referring to Defendant's Exhibit V for Identification the Determination of the Equal Employment Opportunity Commission District Office in Newark, New Jersey as to charge TNK2-0397 you will note it is dated February 25, 1975?

A That is correct.

Q I show you now a Notice of Right to Sue EEOC Form 161?

A Yes.



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MR. WILLIAMS: Which is referred to in Defendant's Exhibit V.

I ask that be marked Defendant's Exhibit W.

(Notice of Right to Sue EEOC Form 161 referred to was marked "Defendant's Exhibit W for Identification, September 10, 1975.")

Q Mr. Halder, when did you receive the

Determination, Defendant's Exhibit V from the Equal

Employment Opportunity Commission?

A On 25th of Merch, 1975.

Q Do you have the envelope in which you received it?

A I think I throw it out -- I don't have it with me, I may have it home, I may. I may have thrown it away.

Q You state you received it on March 25th?

A That is correct.

Q Is that the date you received the Right to Sue also?

A That is correct.

Q You're aware, of course, that the Determination refers to the Notice of Right to Sue?



O And indicates it is enclosed.

Do you have any explanation for the one month difference between the date of Determination and the date you say you received it?

A Yes, I do.

Yes.

A

Q Please explain.

A It came by certified mail and I got -it came to the Jamaica Post Office on February 26th.
They ask me to go down there and collect it. I
didn't have any time at that time. I was working all
day and all night on some other case. Then again I
got a final notice on March 7, 1975, I go to the
Post Office.

Q You were notified therefore by the Federal Government on February 26, 1975 that the Determination and the Notice of Right to Sue?

A I didn't know why.

Q Defendant's Exhibits V and W were waiting you certified mail at the post office?

A Something was waiting at the post office, there was no way for me to see what was waiting.

There was a certified mail swaiting at the post office.

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This receipt was delivered to you February 26, 1975 yet you didn't pick up the certified mail until March 25, 1975?

I didn't pick it up at all, I didn't have the time to go to the post office. It came by ordinary mail on March 25, 1975.

> MR. WILLIAMS: I ssk that we mark for Identification --

THE WITNESS: At that time I was extremely busy, I was doing some other things and I did not have a chance to go to the post office.

MR. WILLIAMS: As Defendant's Exhibit X, U.S. Government Postal Service Form Number 3849 referring to Article Number 104600 with the name and addres of B. Halder, 161-26 86th Avenue, it appears to be Avenue.

THE WITNESS: 36 Crescent.

MR. WILLIAMS: Crescent, CR. Indicating certified mail was waiting at the Jamaica Post Office at 164th Street.

THE WITNESS: All it says mail was waiting, it doesn't say what was waiting, I didn't

Sutfalk (516) FD 8-4221

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THOUSE THE STATE OF THE STATE O

have any way to tell.

MR. WILLIAMS: It will speak for itself.

I ask to be marked for Identification
as Defendant's Y, a second postal service
form 3849 similarly identified, similarly
addressed and bearing the stamp "Final Notice
March 7, 1975."

(U.S. Government Postal Service Form #3849 referring to Article #104600 referred to was marked "Defendant's Exhibit X for Identification, September 10, 1975." and

Second postal service form 3849
stamped "Final Notice March 7, 1975
referred to was marked "Defendant's
Exhibit Y for Identification,
September 10, 1975.")

Determination of No Probable Cause and your Right to Sue within ninety days, make that Notice of Right To Sue within ninety days, were delivered to your post office on February 26, 1975 and you were so notified, but due to the press of business you could not pick them up and they were delivered to you after

Softer 15161 10 3 4221

Halder - direct

two notifications on March 25, 1975?

That is correct.

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That's a fair representation ?

It came by ordinary mail, the Determination and the Motice of Right to Sue I got on March 25th, that came by ordinary mail. When it came by certified mail I was too busy and I could not think of going to the post office and doing anything other than what I was doing at that time.

Mr. Halder, you say according to your resume you have a Batchelor of Science Degree in Electrical Engineering?

That is correct.

From the University of Calcutta. To the best of your memory can you outline the courses you took at the University of Calcutta relating to communications and electronics?

In the final year we had to choose an elective subject, I had taken line communication in electronics or hydroelectric power or I think there was a course in traction, electric traction. I chose to elect line communication.

This was one course?

24

That is correct. CONSOLIDATED STENDINGE REPORTERS . MAIN DEFICE 725 Western Ave. Clair Place N.Y. 13114 (416) 45 (7)(4) Julia, P. Tankanan New York City 1917 905 4167 .

. Q ·	Prior to	that one	course	in line	communica
tions ele	etronics,	all your	other	courses	were basic
engineeri	ing course	3?			

- A In the first two years what we learn was usic engineering courses and in our third and fourth year we learned primarily electrical engineering.
- Q Did you deal with computers during that time?
 - A No, not at all.
- Q You note that you served in the Indian

 Army, in what capacity did you serve in the Indian

 Army?
 - A I received basic infantry training.
 - Q You served as a rifle man?
 - A We call it officer cadet.
 - MR. WILLIAMS: I have no further questions at this time.

We'll adjourn the Deposition and allow (Continued on next page with jurat.)



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Mr. Helder to review the transcript for signature and of course any corrections, et cetera in the normal course.

> (Whereupon, the examination was adjourned at 4:15 o'clock p.m.)

Subscribed and sworn to before me

this ____ day of _____1975

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Halder

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CERTIFICATE

STATE OF NEW YORK)
ss
COUNTY OF NASSAU)

I, Bruce Rothman, a Notary Public in and for the County of Nessau, State of New York, hereby certify that the foregoing examination of

BISWANATH HALDER was

10thday of September , 1975 , and recorded stenographically by me; and that the foregoing examination is a
correct and accurate transcript of my stenographic notes.

I further certify that the witness was duly sworn by me, prior to testifying, to tell the truth, the whole truth, and nothing but the truth;

I further certify that I am not an attorney or counsel for any of the parties, that I am not related to or employed by any of the parties or any of the attorneys in this action, and that I am not financially interested in the action;

IN WITNESS WHEREOF, I have hereunto set my hand this 25 day of September , 1975 .





COURT OF APPEALS FOR THE SECOND CIRCUIT

Index No.

BISWANATH HALDER,
Plaintiff- Appellant,

- against -

INFORMATICS INC AND EQUIMATICS INC,., Defendant- Appellee. Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF

NEW YORK

1. Velma N. Howe

being duly sworn.

depose and say that deponent is not a party to the action, is over 18 years of age and resides at 298 Macon Street, Brooklyn, New York 11216

That on the

14th

day of July

196 , deponent served the annexed Appendix

55.

Brief

upon Biswanath Halder

attorney(s) for

Plaintiff- Appellant

in this action, at 173-17 65th Avenue, Fresh Meadows, New York 11365

11365

the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

Sworn to before me, this

14+

day of

July

19 76

ROBERT T. BRIN NOTARY FUBLIC, Stale of New York No. 31-0418950

Qualified in New York County Commission Expires March 30, 1977 VELMA N. HOWE